

Message Text

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SUMMARY: DETAILED ANALYSIS OF ATTRIBUTES OF NEW ORGANIZATION UNDER PROVISIONS OF JAPANESE LAW CANNOT BE UNDERTAKEN UNTIL AGREEMENT MADE AVAILABLE TO GOJ, BUT GOJ AUTHORITIES BELIEVE NO FUNDAMENTAL PROBLEMS EXIST. JAPANESE DO NOT CONTEMPLATE SUBMISSION OF EITHER CORPORATE CHARTER OR INTERNATIONAL AGREEMENT TO DIET, AND EMBASSY AGREES THIS WOULD BE UNDESIRABLE. ABCC UNION HAS REFERRED ITS DISPUTE WITH ABCC MANAGEMENT TO JAPAN'S CENTRAL LABOR RELATIONS BOARD, WHICH HAS REQUESTED ABCC TO APPEAR. END SUMMARY.

1. SCICOUNS AND AEC REP DISCUSSED QUESTION RAISED IN REFTTEL A WITH FONMIN REPS (MATSUURA AND MATSUOKA). AS DEPT WILL APPRECIATE, EXTENT TO WHICH QUESTION COULD BE EXPLORED LIMITED BY FACT THAT US DRAFT STILL NOT AVAILABLE TO GOJ. MOREOVER, IT APPARENT FROM DISCUSSION THAT JAPANESE HAVE MADE LITTLE PROGRESS IN DEVELOPMENT OF THEIR PROPOSAL FOR STRUCTURE OF NEW INSTITUTE, AND HAVE NOT CONSIDERED IN DETAIL WHETHER JAPANESE LAW PERMITS NEW ORGANIZATION TO HAVE NECESSARY ATTRIBUTES.

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TURE OF NEW INSTITUTE, AND HAVE NOT CONSIDERED IN DETAIL WHETHER JAPANESE LAW PERMITS NEW ORGANIZATION TO HAVE NECESSARY ATTRIBUTES.

2. AS NOTED REF B JAPANESE VISUALIZE TWO SEPARATE DOCUMENTS INVOLVED IN CREATION OF NEW INSTITUTE, ONE A BILATERAL AGREEMENT AT GOVERNMENTAL LEVEL SETTING FORTH GENERAL PRINCIPLES, AND A SECOND THE CORPORATE CHARTER PER SE. LATTER DOCUMENT, ACCORDING TO JAPANESE LAW, MUST BE ISSUED BY MINISTRY CONCERNED WITH FIELD OF ACTIVITY OF PROPOSED FOUNDATION, IN THIS CASE THE MINISTRY OF HEALTH AND WELFARE. JAPANESE WOULD REGARD THIS DOCUMENT AS "PRIVATE", RATHER THAN GOVERNMENTAL, BUT WE WERE UNSUCCESSFUL IN ILLICITING FROM FONMIN REPS WHAT PARTIES WOULD SIGN OR PETITION FOR CHARTER. MATSUURA STRESSED, AS HE HAS IN PAST, THAT DOCUMENTS WOULD NOT RPT NOT BE SUBMITTED TO DIET, AND THAT GOJ WOULD BE MOST RELUCTANT TO SEE THIS HAPPEN. WHILE DIET OR APPROPRIATE COMMITTEES THEREOF WOULD BE MADE AWARE OF PRINCIPLES OF NEW INSTITUTION IN CONNECTION WITH BUDGET CONSIDERATION, CORPORATE CHARTER WOULD NOT BE MADE AVAILABLE TO DIET, AND ITS CONTENTS WOULD BECOME KNOWN TO DIET ONLY UPON PUBLICATION IN OFFICIAL GAZETTE.

3. MATSUURA EXPLAINED THAT, UNDER JAPANESE LAW (JAPANESE CIVIC CODE, CHAPTER 2 (JURIDIC PERSONS) SECTION 1, ARTICLES 33-51), TWO TYPES OF NON-PROFIT CORPORATIONS ARE PROVIDED FOR. FIRST, DESIGNATION FOR WHICH MIGHT BE TRANSLATED AS "FOUNDATION", IS CHARACTERIZED BY INITIAL ENDOWMENT OF FUNDS OR OTHER CAPITAL ASSETS; SECOND, WHICH MIGHT BE TRANSLATED AS "ASSOCIATION" DOES NOT REQUIRE INTIAL CAPITAL, BUT DEPENDS ON GROUP OF INCORPORATORS. JAPANESE VISUALIZE NON-PROFIT CORPORATION OF FIRST-TYPE, I.E., "FOUNDATION", AS BEING MOST SUITABLE FOR NEW ORGANIZATION. ACCORDING TO STATUTE, ARTICLES OF INCORPORATION MUST COVER OBJECT, NAME, OFFICE LOCATION, MEANS OF FINANCE, AND DIRECTORS OF FOUNDATION, BUT DEGREE OF DETAIL IN WHICH THESE TOPICS ARE TO BE COVERED IS UNCLEAR. EMBASSY PRESUMES ENGLISH TRANSLATION JAPANESE CIVIC CODE IS AVAILABLE IN DEPARTMENT, BUT MATSUURA WARNED THAT TRANSLATION IS UNRELIABLE.

4. MATSUURA UNABLE TO PROVIDE INFORMED RESPONSE TO SUCH QUESTIONS AS WHETHER CITED PROVISIONS OF LEGAL CODE WOULD LIMITED OFFICIAL USE
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ALLOW "FOUNDATION" TO BE GOVERNED BY BINATIONAL BOARD OF GOVERNORS. HIS GENRAL ATTITUDE WAS THAT, SINCE ABCC PROBLEM COULD BE SOLVED ONLY IN THIS WAY, I.E., BY CREATING BINATIONAL FOUNDATION, WAYS WOULD HAVE TO BE FOUND TO MAKE LEGAL FRAMEWORK FIT SITUATION.

5. MATSUURA ALSO STATED THAT REVIEW OF GOJ'S APPROACH TO ABCC PROBLEM HELD WITH LDP DIET COMMITTEE ON OCTOBER 30 WAS QUITE SUCCESSFUL, AND GREEN LIGHT WAS OBTAINED FOR PROCEEDING WITH THIS APPROACH. HOWEVER, SIMILAR SESSIONS WITH OPPOSITION COMMITTEES HAVE NOT YET BEEN HELD, AND STRONG OPPOSITION IS TO BE EXPECTED, ALTHOUGH MATSUURA BELIEVES THAT FAVORABLE

OUTCOME STILL PROBABLE.

6. EMBASSY WAS INFORMED ON DECEMBER 6 BY ABCC DIRECTOR DR. LEROY ALLEN THAT, DESPITE LUMP SUM PAYMENT OF SUBSTANTIAL RETROACTIVE SALARY INCREASE TO ALL LOCAL EMPLOYEES, ABCC UNION APPLIED ON DECEMBER 5 FOR "CONCILIATION" BY JAPAN'S CENTRAL LABOR RELATIONS BOARD. UNION COMPLAINTS INCLUDE DEMAND FOR "SPEEDY RE-ORGANIZATION" OF ABCC, IMMEDIATE BASE SALARY RE-ADJUSTMENT, AND "SECURE EMPLOYMENT". UNION HAS ALSO REQUESTED DR. ALLEN TO INFORM JAPANESE AND US GOVERNMENTS IN WRITING THAT ABCC FAVORS REORGANIZATION OF INSTITUTE ALONG UNION-PROPOSED LINES (I.E., CONVERSION TO ESSENTIALLY JAPANESE ORGANIZATION). DR. ALLEN HAS REFUSED TO TAKE THIS STEP. EMB IS CONSULTING WITH ABCC ON PROPER PROCEDURE TO FOLLOW IN RESPONDING LABOR RELATIONS BOARD REQUEST TO ABCC TO APPEAR IN CONNECTION WITH UNION COMPLAINT.

7. MATSUURA PHONED SCICOUNS TODAY TO CONVEY MESSAGE THAT SOCIALIST DIET MEMBER OHARA, OUTSPOKEN OPPONENT OF PRESENT ABCC SET-UP, HAD INSISTED THAT MINISTRY OF HEALTH AND WELFARE, THROUGH FONMIN, SOLICIT US EMBASSY'S ASSISTANCE IN ASSURING THAT UNION DEMANDS ARE MET. MATSUURA CONVEYED MESSAGE AS INSTRUCTED, BUT REITERATED FULL UNDERSTANDING THAT SHOE IS ON OTHER FOOT - THAT IS, THAT GOJ MUST FIRST MEET IS COMMITMENT TO PROVIDE NECESSARY FUNDING. GOVERNMENT'S BUDGET IS SCHEDULED FOR DISCLOSURE ON DECEMBER 29, WITH FINAL INTERNAL DELIBERATIONS TAKING PLACE DURING PRECEDING WEEK, AND MATSUURA STILL CONFIDENT NECESSARY FUNDS WILL BE INCLUDED. IMPLICATION OF MATSUURA'S PRESENTATION WAS THAT AS SOON AS LIMITED OFFICIAL USE
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GOVERNMENT'S BUDGET IS DISCLOSED, ABCC CAN SAFELY GRANT PAY INCREASE, SINCE RISKS OF DIET REJECTION OF FUND REQUEST THEREAFTER ARE SMALL.

8. EMBASSY COMMENT: FONMIN REP MATSUURA MADE IT CLEAR THAT GOJ WOULD REGARD SUBMISSION OF NEW ABCC AGREEMENT TO DIET AS EXTREMELY UNDESIRABLE NOT ONLY FROM STANDPOINT NORMAL JAPANESE PROCEDURES, BUT IN TERMS OF GENERATING UNNECESSARY AND POSSIBLY DAMAGING DEBATE ON DETAILED ARRANGEMENTS FOR NEW INSTITUTION. EMBASSY FULLY AGREES WITH THIS ESTIMATE, AND QUESTIONS WHETHER ADVANTAGES GAINED FROM DIET APPROVAL IN OVERCOMING PROCEDURAL OBSTACLES WOULD OUTWEIGH RISKS TO SUCCESSFUL OUTCOME WHICH SUBMISSION FOR DIET APPROVAL COULD ENTAIL.
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